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Credit Card Reform Goes to College

I. INTRODUCTION

By the time Sarah, an eighteen year old freshman at the University of Georgia, completed her first week of college, she was swamped with offers for free pizza, t-shirts, teddy bears, and movie tickets for filling out an application from the numerous credit card issuers.¹ This was hardly harmless marketing from a credit card issuer. Over the course of three years, Sarah obtained three credit cards in this manner, and accumulated nearly \$3,000 of debt.² Sarah learned the hard way. The free gifts she received from the credit card issuers also came with “high fees, heavy interest rate burdens, and complex terms: three credit card practices that have been proven to heighten the risk of default.”³

This story is typical for young students across the United States.⁴ But things are set to change in February 2010 through the implementation of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act), a law crafted to protect consumers by overhauling deceptive credit card practices in

1. See generally *Problem Credit Card Practices Affecting Students: Hearing Before the Subcomm. On Financial Institutions and Consumer Credit of the H. Comm. on Financial Serv.*, 110th Cong. 16 (2008) [hereinafter *Problem Credit Card Practices*] (statement of Erica L. Williams, Policy and Advocacy Manager, Campus Progress Action) (describing the experiences of Kali Dunn, on whom the author based the fictional account of Sarah's experiences).

2. *Id.*

3. *Id.*

4. *Id.*; see generally SALLIE MAE, HOW UNDERGRADUATE STUDENTS USE CREDIT CARDS: SALLIE MAE'S NATIONAL STUDY OF USAGE RATES AND TRENDS 2009 3 (2009), available at <http://www.salliemae.com/NR/rdonlyres/0BD600F1-9377-46EA-AB1F-6061FC763246/10744/SLMCreditCardUsageStudy41309FINAL2.pdf> (surveying in spring 2008 credit card usage among 1200 undergraduate students between the ages of eighteen and twenty-four); EDMUND MIERZWINSKI & CHRISTINE LINDSTROM, THE CAMPUS CREDIT CARD TRAP: A SURVEY OF COLLEGE STUDENTS AND CREDIT CARD MARKETING 1 (U.S. Pub. Interest Research Group Educ. Fund 2008), available at <http://www.truthaboutcredit.org/uploads/E4/5s/E45s1AWAIToWzWm6hblF9A/Campus-Credit-Card-Trap-Report.pdf> (analyzing 1500 college students' reported credit card use and attitudes toward on campus marketing techniques).

America.⁵ Although portions of the CARD Act were specifically intended to protect young consumers,⁶ they will also experience severe and likely unintended consequences.⁷ While the CARD Act will impose some needed restrictions on credit card issuers' on-campus marketing practices, the stricter limitations the CARD Act imposes on underage consumers' access to credit cards will severely and unnecessarily restrict underage consumers' access to credit in a time of economic turmoil.⁸

The CARD Act, as signed into law on May 22, 2009,⁹ was designed "to establish fair and transparent practices relating to the extension of credit under an open end consumer credit plan."¹⁰ It provides protections to underage consumers by attempting to curb the problem of excessive spending by young credit card holders and addresses the deceptive marketing practices employed by credit card issuers.¹¹ Despite these stated goals, the CARD Act makes it extremely difficult, and in some cases impossible, for young consumers to establish and maintain credit in a safe and responsible manner.¹²

This Note focuses on the portions of the CARD Act that pertain to credit card access by young consumers and on-campus marketing techniques. Part II of this Note explores current credit card use by young consumers in America as well as the current marketing practices of credit card issuers that prompted Congressional action.¹³ Part III details the relevant CARD Act

5. See Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734 (to be codified in scattered sections of 15 U.S.C.).

6. See *id.* §§301-305.

7. Karen Gross, Commentary, *New Credit-Card Rules May Hurt Financially Insecure Students*, CHRON. HIGHER EDUC., July 13, 2009, <http://chronicle.com/article/New-Credit-Card-Rules-May-H/47039/>; See Ralph MacDonald et. al., *The Credit CARD Act of 2009 - Changes Will Affect Consumers, Card Issuers, Retailers, Colleges, and Investors*, MONDAQ BUS. BRIEFING, June 11, 2009, <http://www.mondaq.com/unitedstates/article.asp?articleid=81090>.

8. Gross, *supra* note 7.

9. Posting of Jesse Lee to White House Blog, <http://www.whitehouse.gov/blog/a-new-era-for-credit-cards> (May 22, 2009, 17:40 EST).

10. 156 CONG. REC. H4960 (daily ed. Apr. 29, 2009) (statement of Al Green).

11. See Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, §§301-305, 123 Stat. 1734, 1747-1751 (to be codified in scattered sections of 15 U.S.C.).

12. SALLIE MAE, *supra* note 4, at 3.

13. See *infra* Part II, pp. 289-96.

provisions and analyzes the problems with the language of the CARD Act.¹⁴ Part IV assesses whether the CARD Act meets or falls short of the expectations of its proponents, and discusses the CARD Act's potential effect on the ability of young consumers to access and establish credit in harsh economic times.¹⁵

II. THE PROBLEMS SURROUNDING UNDERAGE CREDIT USE AND CREDIT CARD MARKETING

A. *Young Consumers and Spending*

Credit card use by young consumers is greater than ever.¹⁶ Eighty-four percent of undergraduate students reported having a credit card, and a majority of students reported having at least four credit cards, according to a 2008 study.¹⁷ Yet young consumers owning credit cards is not in and of itself a problem: as both proponents and opponents of the law point out, credit cards can provide convenient access to necessary credit and enable students who can properly manage debt to develop a positive credit history.¹⁸

Young consumers generally view credit cards as convenient because they provide a means to purchase otherwise unaffordable items, they are accessible, and they generally make certain transactions—such as telephone and online purchases—easier.¹⁹ Problems arise, however, when consumers manage debt irresponsibly.²⁰ Only thirty-one percent of students reported never purchasing an item that they knew they would be unable to pay for

14. See *infra* Part III, pp. 296-302.

15. See *infra* Part IV, pp. 302-07.

16. SALLIE MAE, *supra* note 4, at 5, 19 (reporting that the average outstanding balance held by college students was \$3,173, which was an increase from the reported \$2,169 in 2004's study).

17. *Id.* at 3; *But cf.* MIERZWINSKI & LINDSTROM, *supra* note 4, at 5 (showing sixty-six percent of students with at least one credit card).

18. See *Problem Credit Card Practices*, *supra* note 1, at 15 (statement of Kenneth J. Clayton, Managing Director and Gen. Counsel, ABA Card Policy Council, American Bankers Association).

19. U.S. GEN. ACCOUNTING OFFICE, CONSUMER FINANCE: COLLEGE STUDENTS AND CREDIT CARDS 8-9 (2001).

20. See *Uncle Sam Wants Youths to be Credit Card Savvy*, DALLAS MORNING NEWS, Oct. 7, 2009 at 10 [hereinafter *Uncle Sam*].

when the bill became due.²¹ Among undergraduates, fifteen percent or less of students reported carrying a zero balance every month.²² Average outstanding balances on credit cards increased by forty-six percent from 2004 to March 2008.²³ Even more alarming is the increase in the number of students carrying an outstanding balance of more than \$7000.²⁴ Students who have educational loans or have previously defaulted on a credit card are more likely to maintain an outstanding balance on a credit card.²⁵

Along with the problem of outstanding balances come the problems of late and over-the-limit fees and default risks.²⁶ The unintended consequences of late payments and excessive debt can far “outweigh the advantages” of having a card.²⁷ These consequences include loss of the card through cancellation by the consumer or cancellation by the card company, difficulty in obtaining a credit card in the future, and unsustainable debt from living beyond one’s means.²⁸

Issuers’ “lax standards” for credit card applicants have enabled college students to obtain substantial credit.²⁹ Student applicants on college campuses are generally not required to meet income standards and background checks that would otherwise be required.³⁰ Instead, credit card issuers provide students with an “automatic qualification” for instant credit approval.³¹ Critics

21. SALLIE MAE, *supra* note 4, at 11.

22. *Id.* at 9 (finding that freshman students had the highest percentage of zero balances at nearly fifteen percent in 2008, down from sixty-nine percent in 2004; and that for all other grade levels, the number of students carrying a zero balance dropped by over fifty percent between 2004 and 2008).

23. *Id.* at 5.

24. *Id.* at 9 (finding that for seniors, the number nearly doubled from ten percent to nineteen percent; and that there was a one percent increase for freshman and a four percent increase for sophomores and juniors).

25. MIERZWINSKI & LINDSTROM, *supra* note 4, at 6.

26. *Id.*

27. U.S. GEN. ACCOUNTING OFFICE, *supra* note 19, at 9-10.

28. See MIERZWINSKI & LINDSTROM, *supra* note 4, at 6 (noting that where six percent of students reported having a card cancelled by the credit card company for delinquency and nearly twenty percent reported cancelling a card in good standing as a result of late or non-payment); U.S. GEN. ACCOUNTING OFFICE, *supra* note 19, at 9-10 (noting the costly effects of defaults and excessive debt).

29. See *Problem Credit Card Practices*, *supra* note 1, at 12 (statement of Christine Lindstrom, Director, Higher Education Project, U.S. PIRG).

30. *Id.*

31. *Id.* at 74.

attribute this waiver of standards to the increased revenue that students often provide credit card issuers.³² Students are more likely to default, resulting in high fees to the credit card company.³³ Because college students are just beginning to establish a credit history and have little to no income or savings, the ability to repay loans is more difficult.³⁴ Furthermore, young consumers, particularly college students, lack financial literacy, making it more likely that they will sign a credit card agreement without understanding the terms and risks of default.³⁵ Credit card issuers often offset this risk of default by imposing higher interest rates on student applicants, which further increases default risk.³⁶ This waiver of standards, along with the long-standing priority of credit card issuers providing cards to college students,³⁷ generally makes college students an attractive target for credit card issuers and has led to the current marketing practices.³⁸

B. Credit Card Marketing Practices on College Campuses

Credit card issuers aggressively market to entering college freshmen because they are one of the only demographic groups in America largely without credit cards.³⁹ Issuers anticipate that a

32. *Id.* at 66 (statement of Benjamin Lawsky, Deputy Counselor and Special Assistant to the New York State Att’y Gen.).

33. See CHRIS DODD, AMENDING THE CONSUMER CREDIT PROTECTION ACT, TO BAN ABUSIVE CREDIT PRACTICES, ENHANCE CONSUMER DISCLOSURES, PROTECT UNDERAGE CONSUMERS, AND FOR OTHER PURPOSES, S. REP. NO. 111-16, May 4, 2009.

34. See U.S. GEN. ACCOUNTING OFFICE, *supra* note 19, at 9-10; *Problem Credit Card Practices*, *supra* note 1, at 74 (statement of Christine Lindstrom, Director, Higher Education Project, U.S. PIRG).

35. *Problem Credit Card Practices*, *supra* note 1, at 66 (2008) (statement of Benjamin Lawsky, Deputy Counselor and Special Assistant to the New York State Att’y Gen.).

36. U.S. GEN. ACCOUNTING OFFICE, *supra* note 19, at 7.

37. See *infra* Part II.B.

38. See *Problem Credit Card Practices*, *supra* note 1, at 12 (statement of Christine Lindstrom, Director, Higher Education Project, U.S. PIRG); See generally MIERZWINSKI & LINDSTROM, *supra* note 4, at 7 (detailing the marketing strategies employed on college campuses).

39. See *Problem Credit Card Practices*, *supra* note 1, at 65 (statement of Benjamin Lawsky, Deputy Counselor and Special Assistant to the Att’y Gen. of N.Y.) (discussing credit card company marketing to college students); see SALLIE MAE, *supra* note 4, at 6 (noting that thirty-nine percent of students reported obtaining their first card prior to entering college); see U.S. GEN. ACCOUNTING

student's first credit card⁴⁰ will become the student's "top-of-the-wallet" card, which is the card that the student is most likely to use.⁴¹ Issuers hope that students will then rely on them for other longer-term loans such as mortgages and car loans.⁴² To achieve this goal, credit card issuers have employed a variety of on-campus marketing techniques, including direct solicitation, marketing through student organizations, and exclusive arrangements with colleges, universities and alumni associations.⁴³

Direct solicitation on campus was described by one school administrator as a "carnival atmosphere."⁴⁴ One of the main techniques reported was on-campus tabling, which involves a representative of a credit card issuer securing a table at a prominent location on campus.⁴⁵ One study reported that seventy-six percent of students stopped at a table on campus that was marketing credit cards.⁴⁶ With this type of technique, credit card issuers typically offer a gift to students in exchange for filling out a credit card application.⁴⁷ Gifts used to attract students include inexpensive items such as t-shirts, water bottles, and "instant gratification" items such as food.⁴⁸ As a study done by the U.S. Public Interest Research Group (US-PIRG) Education Fund demonstrated, "credit card companies and their subcontractors are taking advantage of students' chronic cash shortages to attract

OFFICE, *supra* note 19, at 16 (discussing a similar study conducted by Student Monitor, where thirty-six percent of students reported obtaining a credit card before entering college, and forty-six percent reported obtaining a credit card during their freshman year of college).

40. MIERZWINSKI & LINDSTROM, *supra* note 4, at 7 (identifying "first-in-the-wallet" as the first credit card that a person has obtained; the intended effect is to create an instant relationship with the consumer that will hopefully result in the card becoming the most relied on card in the future).

41. *See id.*

42. Kathy Chu, *Credit Cards Go After College Students*, Mar. 30, 2008, USA TODAY, http://www.usatoday.com/money/perfi/college/2008-03-30-credit-cards-college_N.htm.

43. *See* MIERZWINSKI & LINDSTROM, *supra* note 4, at 7-9.

44. U.S. GEN. ACCOUNTING OFFICE, *supra* note 19, at 27 (2001).

45. *See id.* at 7.

46. MIERZWINSKI & LINDSTROM, *supra* note 4, at 3.

47. U.S. GEN. ACCOUNTING OFFICE, *supra* note 19, at 27; *see also* MIERZWINSKI & LINDSTROM, *supra* note 4, at 3 (finding that 31% of respondents were offered a gift, most commonly a t-shirt, and that the most common types of food offered were pizza, subs, or other types of lunch foods).

48. *See* MIERZWINSKI & LINDSTROM, *supra* note 4, at 3.

them to tables with offers of the instant gratification of free food, then getting them to sign up for cards that ironically may contribute to later cash problems.”⁴⁹ The result of these incentives and free gifts: little to no focus, on the part of the credit card issuer as well as the young consumer, on the responsibilities and consequences of owning a credit card.⁵⁰

Credit card issuers also increase their presence on campus by paying student organizations in exchange for their assistance with filling out applications.⁵¹ For example, when university rules required that only students could table in student unions, credit card issuers paid student organizations for tabling on the company’s behalf.⁵² In other instances, credit card issuers provided payment directly to student organizations for convincing their friends and classmates to fill out credit card applications.⁵³ This “insidious marketing tool” relies on peer pressure to increase the number of completed credit card applications.⁵⁴

In addition to the physical presence of credit card issuers on campus, eighty percent of students have reported receiving mail solicitations from credit card issuers,⁵⁵ averaging nearly five solicitations per month.⁵⁶ Additionally, twenty-two percent reported receiving an average of four phone calls per month.⁵⁷

Credit card issuers also establish their presence through direct relationships with colleges, universities, and alumni associations.⁵⁸ “University-branded cards” provide a lucrative arrangement that benefits both credit card issuers and the institution of higher education.⁵⁹ A contract between the credit

49. *Id.* at 4.

50. U.S. GEN. ACCOUNTING OFFICE, *supra* note 19, at 28.

51. *Id.* at 27-28.

52. *Id.* (“One credit card vendor told us that they reimbursed student groups based on either an hourly rate, a flat fee, or a fee based on the number of completed applications. A different credit card vendor told us that they pay student groups between \$25 and \$200 a day to table credit cards as well as \$1 to \$5 for each completed application.”).

53. See MIERZWINSKI & LINDSTROM, *supra* note 4, at 7.

54. *Id.*

55. *Id.* at 4.

56. *Id.*

57. *Id.*

58. *Id.* at 7; U.S. GEN. ACCOUNTING OFFICE, *supra* note 19, at 7.

59. U.S. GEN. ACCOUNTING OFFICE, *supra* note 19, at 7, 30.

card issuer and the institution allows for an exclusive arrangement in which a credit card bears both the name of the card issuer and the logo or name of the institution.⁶⁰ Under most “affinity relationships,” the credit card issuer pays an annual fee to the sponsoring organization for the number of cards issued, or a percentage of every transaction charged on each card, or both.⁶¹ This arrangement often results in the credit card issuer paying millions of dollars per year to the sponsoring institution.⁶²

When the sponsoring organization is the university, however, students may directly benefit as fees often go toward building maintenance, scholarship programs, and general operating costs.⁶³ The costs to students, however, can be greater than they realize; often under these arrangements, the universities and organizations provide the students’ information to the credit card issuers, which can often result in cross-marketing other cards.⁶⁴

These practices result in the extension of credit to young consumers without an assessment of each individual’s ability to handle such debt.⁶⁵ Prior to the passage of the CARD Act, restrictions on the ability of credit card issuers to market aggressively to young consumers were set by individual colleges and universities, and such restrictions varied across schools.⁶⁶

C. *The Need for Congressional Legislation*

The CARD Act was enacted in order to increase the scope of and “more aggressive[ly] implement” two final rules that the Federal Reserve Board (FRB) promulgated in December 2008.⁶⁷ The first rule made amendments to Regulation Z, which implements the Truth in Lending Act, pertaining to required

60. *Id.*

61. *Id.*

62. Chu, *supra* note 42.

63. U.S. GEN. ACCOUNTING OFFICE, *supra* note 19, at 30.

64. MIERZWINSKI & LINDSTROM, *supra* note 4, at 7; U.S. GEN. ACCOUNTING OFFICE, *supra* note 19, at 7.

65. S. REP. NO. 111-16, at 8 (2009) (providing an overview of the aggressive marketing practices aimed at college students).

66. U.S. GEN. ACCOUNTING OFFICE, *supra* note 19, at 7.

67. Ralph MacDonald et. al., *supra* note 7.

disclosures for open-end credit.⁶⁸ The second rule, jointly published with the Office of Thrift Supervision (OTS) and the National Credit Union Administration (NCUA), pertains to protecting consumers from unfair credit card practices.⁶⁹ The agencies' proposed rules resulted in over 66,000 public comments, the most received by the FRB in its history, signaling a congressional need to introduce new and additional provisions to better protect American consumers.⁷⁰

The Credit Cardholders' Bill of Rights Act of 2008, as the CARD Act was originally named, was considered by both the Senate and House of Representatives throughout 2008 and 2009.⁷¹ In response to the 2008 Federal Reserve final rules, the bill was revived in 2009 in both the Senate and House of Representatives and went through significant changes before being signed into law.⁷²

When the CARD Act was introduced into the House of Representatives in January 2009,⁷³ it contained provisions that were not included in the final version of the bill.⁷⁴ A college student under this version of the bill was defined as a full-time student between the ages of eighteen and twenty-one years old.⁷⁵ House Republicans strongly objected to the bill because they felt that the credit history requirements were "pretty intrusive" and

68. Truth in Lending, 74 Fed. Reg. 54,124 (Oct. 21, 2009) (to be codified at 12 C.F.R. pt. 226).

69. *Id.*

70. S. REP. NO. 111-16, at 8 (2009); *New Credit Card Rule Outlaws Five 'Unfair' Practices*, 17 CLARKS' BANK DEPOSITS AND PAYMENTS MONTHLY 1, Dec. 2008; MacDonald et al., *supra* note 7.

71. Credit Cardholders' Bill of Rights Act of 2008, H.R. 5244, 110th Cong. (2008) (noting that the bill was introduced in the House of Representatives on February 7, 2008 and passed on September 28, 2008); 111 CONG. REC. H4960 (daily ed. Apr. 29, 2009) (statement of Luis Gutierrez) (pointing out the failure of the 2008 bill to ever be signed into law).

72. *See infra* pp. 295-96 and Parts III.D and IV.A-B.

73. Credit Card Accountability Responsibility Disclosure Act of 2009, H.R. 627, 111th Cong. (2009).

74. *See infra* Parts III.D and IV.A-B.

75. H.R. 627.

that card limits would prevent students from covering necessary expenses such as educational and living costs.⁷⁶

III. THE CREDIT CARD ACT OF 2009

Title III of the CARD Act focuses on protections for young consumers and is divided into five major sections.⁷⁷ Specifically, these sections include the extension of credit to underage consumers, the protection from prescreened credit offers, the issuance of credit cards to certain college students, privacy protections for college students, and college credit card agreements.⁷⁸

A. *Extensions of Credit to Underage Consumers*

The CARD Act contains three provisions regarding the extension of credit to underage consumers.⁷⁹ The first provision prohibits the issuing of credit cards or open-end consumer credit plans to any one person under the age of twenty-one.⁸⁰ The CARD Act allows underage consumers to submit a written application for credit, however, if they have an adult cosigner or demonstrate an independent means of repaying the extensions of credit.⁸¹ The statute identifies the adult cosigner as “the parent, legal guardian, spouse, or any other individual who has attained the age of twenty-one having a means to repay debts incurred.”⁸² The FRB subsequently finalized a rule that identifies the cosigner as an individual over twenty-one years old and is either jointly liable with the underage consumer for all debts incurred by either

76. Thecla Fabian, *Dodd Vows Quick Senate Push After House Passes Credit Card Reform on 357-70 Vote*, BNA BANKING DAILY, May 1, 2009, available at 92 BBR 1038.

77. Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, §301-305, 123 Stat. 1734, 1747-1751 (to be codified in scattered sections of 15 U.S.C.).

78. *Id.*

79. *Id.* at § 301 (amending Section 127(c) of the Truth in Lending Act by adding the additional protections for the extension of credit to underage consumers).

80. *Id.* (prohibiting the issuance of credit cards to consumers under the age of twenty-one).

81. *Id.*

82. *Id.*

party on the account, or secondarily liable for debts incurred by the underage consumer in the event that the consumer defaults on the account before turning twenty-one years old.⁸³ Although the FRB rule encourages willing adults to cosign with underage consumers, the adult cosigner, whether related or not, must still demonstrate the means to repay the debt incurred by the underage consumer.⁸⁴

In the event that an underage consumer seeks to apply for a credit card and does not have an adult cosigner, the second provision requires that an applicant demonstrate “an independent means of repaying any obligation arising from the proposed extension of credit in connection with the account.”⁸⁵ Credit card issuers must now assess every individual’s ability to repay, including students, based on a full consideration of the applicant’s income, assets, and current obligations.⁸⁶ The consumer must have the “ability to make the required payments under the terms of such account.”⁸⁷ The FRB rule interprets “required payments” to mean minimum payment since that is all that is required of a consumer each month.⁸⁸

The third provision of this section grants the FRB the authority to determine how certain standards must be met in order to satisfy the prerequisites for obtaining a credit card.⁸⁹ These standards were included in the proposed rules released by the FRB in October 2009.⁹⁰ In January 2010, the FRB implemented the second stage of standards regarding the CARD Act by approving the final rules amending the Truth in Lending Act.⁹¹

83. Truth in Lending, 74 Fed. Reg. at 54,162 (Oct. 21, 2009) (to be codified at 12 C.F.R. pt. 226).

84. *Id.*

85. Credit Card Accountability Responsibility and Disclosure Act of 2009 §301.

86. Truth in Lending, 74 Fed. Reg. at 54,160 (Oct. 21, 2009) (to be codified at 12 C.F.R. pt. 226).

87. Credit Card Accountability Responsibility and Disclosure Act of 2009 § 109.

88. 74 Fed. Reg. at 54,160.

89. Credit Card Accountability Responsibility and Disclosure Act of 2009 § 301.

90. See 74 Fed. Reg. at 54,124 (proposing amendments to Regulation Z, which implements the Truth and Lending Act).

91. Press Release, Bd. of Gov. of the Fed. Reserve Sys., Truth in Lending (Jan. 12, 2010) available at <http://www.federalreserve.gov/newsevents/press/bcreg/20100112a.htm>; R. Christian Bruce, *Fed Adds Last-Minute Tweaks to Final CARD Act Regulations*, BNA BANKING DAILY, Jan. 13, 2010.

The final rules are “largely unchanged” from the regulations that were originally proposed.⁹²

The FRB’s rule clarified that these new prerequisites for obtaining a credit card do not apply to authorized users of another person’s credit card account who are under twenty-one years old because the authorized user has no liability for the amount of debt incurred.⁹³ Unlike a card with an adult cosigner where both parties assume joint liability, an account with an authorized user holds the primary account holder solely liable for the debts incurred.⁹⁴ Thus, young consumers will still be able to use credit cards established in their parents’ name.⁹⁵ This arrangement may positively affect young consumers’ discipline regarding spending.⁹⁶ First, it provides those under twenty-one years old who need credit the ability to make purchases using a credit card.⁹⁷ Second, students are more likely to spend responsibly because the party responsible for the debt will be more likely to monitor the spending.⁹⁸ Finally, the credit card account’s payment history is applied to the authorized user’s credit record, enhancing the users’ credit profile and increasing the user’s ability to qualify for a credit card in the future.⁹⁹

Accessing credit as an authorized user of a parent’s credit card still creates the risk that a young consumer will remain uneducated about financial responsibility¹⁰⁰ and will not be properly prepared for being a financially independent adult.¹⁰¹

92. Bruce, *supra* Note 91; Truth in Lending, 74 Fed. Reg. at 54,124 (implementing the Credit CARD Act).

93. 74 Fed. Reg. at 54,162.

94. See *Uncle Sam*, *supra* note 20.

95. Carolyn Bigda, *Law Makes Getting Credit Cards Harder to Get for Students*, CHI. TRIB., May 31, 2009, available at <http://archives.chicagotribune.com/2009/may/31/business/chi-ym-started-0531may31>.

96. *Id.*

97. *Id.*

98. See *Uncle Sam*, *supra* at Note 20.

99. Bigda, *supra* Note 95.

100. Mary Beth Pinto, Editorial, *College Students Need This Course: Financial Literacy*, PATRIOT NEWS, Sept. 6, 2009, http://www.pennlive.com/editorials/index.ssf/2009/09/college_students_need_this_cou.html.

101. Matthew Bandyk, *How the New Credit Card Bill Will Affect Young Spenders*, U.S. NEWS & WORLD REP., June 2, 2009, <http://www.usnews.com/money/personal-finance/articles/2009/06/02/how-the-new-credit-card-bill-will-affect-young-spenders.html>.

Moreover, not all young consumers have parents with credit cards or parents willing to assume sole responsibility for all of their children's charges, so this is not a universal solution for financial literacy and independence.¹⁰²

B. Prescreened Credit Card Offers and Credit Line Increases

The CARD Act amends the Fair Credit Reporting Act¹⁰³ to prohibit prescreened credit card offers to underage consumers unless they specifically opt-in for the offers.¹⁰⁴ The CARD Act also amends the Truth in Lending Act¹⁰⁵ to prohibit any credit limit increases for accounts with a jointly liable adult unless that adult agrees to and assumes joint liability for the increase.¹⁰⁶

C. Issuance of Credit Cards and Privacy Protections for College Students

The CARD Act requires any higher educational institution with a marketing agreement or contract with a credit card company to publicly disclose that relationship.¹⁰⁷ Commentators to the FRB's original rules suggested a list of potential ways to disclose such agreements.¹⁰⁸ Examples include posting the agreements on the school's website and providing the agreement "free of cost" upon request.¹⁰⁹

102. Karen Gross, *supra* note 7.

103. Credit Card Accountability Responsibility and Disclosure Act of 2009 Pub. L. No. 111-24, §302, 123 Stat. 1734, 1748 (to be codified in scattered sections of 15 U.S.C.) (amending Section 604(c)(1)(B) of the Fair Credit Reporting Act).

104. Credit Card Accountability Responsibility and Disclosure Act of 2009 § 302 (prohibiting companies from issuing prescreened offers to consumers if "the consumer report does not contain a date of birth that shows that the consumer has not attained the age of 21, or if the date of birth on the consumer report shows that the consumer has not attained the age of 21, such consumer consents to the consumer reporting agency to such furnishing.").

105. Credit Card Accountability Responsibility and Disclosure Act of 2009 § 303 (amending Section 127 of the Truth in Lending Act).

106. *Id.* (prohibiting the issuance of credit cards to certain college students).

107. Credit Card Accountability Responsibility and Disclosure Act of 2009 § 304 (amending Section 140 of the Truth in Lending Act to limit credit card marketing practices on college campuses).

108. *See* Truth in Lending, 74 Fed. Reg. 54,124, 54,186 (Oct. 21, 2009) (to be codified at 12 C.F.R. pt. 226).

109. *Id.*

Card issuers are also now prohibited by the CARD Act from using tangible items, including t-shirts, gift cards, and magazine subscriptions, to target and induce college students to fill out a credit card application.¹¹⁰ Tangible items, however, do not include non-physical inducements such as “discounts, rewards points, or promotional credit terms.”¹¹¹ Also, any tangible items given regardless of whether or not the student fills out a credit card application are not prohibited inducements under the CARD Act.¹¹²

The prohibition against inducements applies to credit card issuers marketing on college campuses,¹¹³ in an area within 1,000 feet of a college campus,¹¹⁴ or at a campus-related event.¹¹⁵ Also included in the Act is the “Sense of Congress” which encourages colleges and universities to adopt additional policies requiring notification from credit card issuers regarding on-campus marketing locations.¹¹⁶ It also encourages limitations on the number of marketing locations.¹¹⁷ Finally, Congress encourages colleges to implement financial education and counseling sessions in new student orientation activities.¹¹⁸

110. Credit Card Accountability Responsibility and Disclosure Act of 2009 § 304; *See also* 74 Fed. Reg. at 54,187 (“[A] tangible item includes . . . any physical item, such as a gift card, a t-shirt, or a magazine subscription, that a card issuer or creditor offers to induce a college student to apply for or open an open-end consumer credit plan offered by such card issuer or creditor.”).

111. *Id.*

112. *Id.*

113. Credit Card Accountability Responsibility and Disclosure Act of 2009 § 304.

114. Credit Card Accountability Responsibility and Disclosure Act of 2009 § 304; 74 Fed. Reg. at 54,127 (“The proposed commentary would also clarify that a location that is within 1,000 feet of the border of the campus of an institution of higher education (as defined by the institution of higher education) is considered near the campus of that institution.”).

115. Credit Card Accountability Responsibility and Disclosure Act of 2009 § 304; 74 Fed. Reg. at 54,127.

116. Credit Card Accountability Responsibility and Disclosure Act of 2009 § 304 (providing a Congressional recommendation for universities to adopt financial literacy policies).

117. *Id.*

118. *Id.*

D. *College Credit Card Agreements*

The CARD Act amends the Truth in Lending Act to regulate agreements between credit card issuers and college institutions.¹¹⁹ The Act also requires creditors to disclose to the FRB all “business, marketing and promotional agreements and college affinity card agreements with an institution of higher education, or an alumni organization or foundation affiliated with or related to such an institution with respect to any college student credit card issued”¹²⁰ The FRB will compile this information to create an annual report issued to Congress and available to the public.¹²¹

“College affinity card(s)” are cards issued in conjunction with an agreement between an institution of higher education, including any alumni organizations related to the institution, and the credit card issuer.¹²² To be subject to the CARD Act’s regulations, an affinity card arrangement must include one of the following criteria:

- (1) The creditor has agreed to donate a portion of the proceeds of the credit card to the institution, organization, or foundation (including a lump-sum or one-time payment of money for access); (2) the creditor has agreed to offer discounted terms to the consumer; or (3) the credit card bears the name, emblem, mascot, or foundation, or other words, pictures or symbols readily identified with such institution or affiliated organization.¹²³

For purposes of the CARD Act, a college student is any student enrolled full- or part-time at an institution of higher

119. Credit Card Accountability Responsibility and Disclosure Act of 2009 § 305 (amending Section 127 of the Truth in Lending Act regarding college credit card agreements).

120. *Id.*

121. Ralph MacDonald et al., *supra* note 7.

122. Truth in Lending, 74 Fed. Reg. at 54,185 (Oct. 21, 2009) (to be codified at 12 C.F.R. pt. 226).

123. 74 Fed. Reg. at 54,185-86.

education.¹²⁴ The FRB rule broadens the group of individuals addressed by the CARD Act in an effort to be consistent with the definition of “college student” in the Truth in Lending Act.¹²⁵ It also provides clarity as the CARD Act itself provided no definition for the term “college student.”¹²⁶

IV. PROBLEMS WITH THE CARD ACT

Though sweeping in its reforms, the CARD Act leaves many stones unturned in its protections for underage consumers. The CARD Act fails to fully restrict credit card issuers’ marketing practices.¹²⁷ Specifically, the CARD Act does not address the maximum credit limit that an underage consumer can obtain on one card, nor does it address the maximum number of cards that an underage consumer may obtain.¹²⁸ Young consumers will still not be restricted in the amount of credit available to them if they have an adult cosigner or demonstrate the ability to repay.¹²⁹ This still leaves the problem of excessive credit use and the threat of default if they cannot afford to repay the debt. Additionally, certain provisions of the Act impose harsher restrictions on credit card users, making it impossible in some cases for underage consumers to obtain credit in times of economic hardship.¹³⁰

124. 74 Fed. Reg. at 54,185; *but see* Credit Card Accountability Responsibility Disclosure Act of 2009, H.R. 627, 111th Cong. (2009) (as passed by House, May 20, 2009) (defining a college student as an individual enrolled full-time and between the ages of eighteen and twenty-one years old).

125. 74 Fed. Reg. at 54,186.

126. Credit Card Accountability Responsibility and Disclosure Act of 2009 § 305 (amending Section 127 of the Truth in Lending Act regarding college credit card agreements).

127. Credit Card Accountability Responsibility and Disclosure Act of 2009 §§ 301-305.

128. *Id.*

129. Pinto, *supra* at note 100.

130. See Letter from Floyd E. Stoner, Executive Vice President, Cong. Relations and Public Policy, Am. Bankers Ass’n, to Senators Harry Reid and Mitch McConnell, United States Senate, on H.R. 627 (May 12, 2009), *available at* <http://aba.com/NR/rdonlyres/76DCD307-2D7E-48A6-A10F623175F0AEAD/60649/SenateLetterreCardBill051209.pdf>.

A. *Items Unaddressed by the CARD Act*

The CARD Act does not set limits on the amount of credit a young consumer may obtain, or even how many cards an individual may obtain.¹³¹ If a student is able to obtain a card, the individual can still spend excessively, even with an adult cosigner.¹³² Further, by allowing students to continue to access credit through a parent's or another adult's account, the CARD Act assumes that these adults have established responsible spending habits and will pass them down to underage consumers.¹³³ Earlier versions of the bill addressed these concerns but were ultimately abandoned prior to the final version.¹³⁴

The April 2009 House version of the bill contained an amendment with underwriting standards for students' credit cards similar to those of normal consumers.¹³⁵ Under these standards, card issuers would be required to obtain information regarding income, income history, and credit history prior to approving any card application for college students.¹³⁶ Limits would be set to the greater of \$500 or twenty percent of the annual income of the underage cardholder.¹³⁷ Additionally, under this prior version card issuers were prohibited from issuing a credit card to any student who already had an existing credit card account with that company.¹³⁸

In this regard, the CARD Act fails to regulate underage consumers' spending habits by focusing instead on establishing high hurdles for individuals to obtain cards in the first place.¹³⁹

131. Credit Card Accountability Responsibility and Disclosure Act of 2009 § 301-305.

132. Pinto, *supra* note 100.

133. *Id.*

134. *See infra* p. 303.

135. Press Release, House Comm. on Fin. Serv., House Approves Credit Cardholders' Bill of Rights (April 30, 2009), *available at* http://www.house.gov/apps/list/press/financialsvcs_dem/pr050109.shtml.

136. Credit Card Accountability Responsibility Disclosure Act of 2009, H.R. 627, 111th Cong. (2009).

137. *Id.*

138. *Id.*

139. Editorial, *From the Daily: Adult Supervision Required*, MICH. DAILY, June 7, 2009, *available at* <http://www.michigandaily.com/content/daily-adult-supervision-required> [hereinafter *Adult Supervision*].

Once the card is obtained, however, the only regulations set by the CARD Act pertain to the inability to raise the credit limit without the express permission of the adult cosigner, if one exists.¹⁴⁰ For those students who are able to obtain a card on their own based on their ability to repay it, no adult cosigner has the incentive to monitor the card use.¹⁴¹

B. Too Harsh or Not Harsh Enough?

The CARD Act places too many harsh and unintended limits on the financial independence of young consumers.¹⁴² Banking associations in particular have consistently criticized the law, expressing concerns over the excessive limitations on access to credit.¹⁴³ In a 2008 House of Representative hearing regarding young consumers and credit, Kenneth J. Clayton of the American Bankers Association argued that the “creation of barriers to credit access”¹⁴⁴ would impose greater hardships on those who rely on credit for both day-to-day and emergency expenses.¹⁴⁵

On the other hand, the CARD Act falls short of many observers’ expectations.¹⁴⁶ One criticism is the lack of any financial literacy requirement for an underage consumer prior to obtaining a credit card.¹⁴⁷ While an earlier version of the Credit Cardholders’ Bill of Rights introduced in early 2009 would have required an underage consumer who was unable to show the ability to repay the debt or secure an adult cosigner to attend a financial literacy course prior to obtaining a credit card, the final

140. See Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, § 304, 123 Stat. 1749, 1734 (providing a Congressional recommendation for universities to adopt financial literacy policies).

141. See U.S. GEN. ACCOUNTING OFFICE, *supra* note 20, at 10 (2001).

142. See *Adult Supervision*, *supra* note 140.

143. Thecla Fabian, *Senate Approves Credit Card Reform 90-5; Quick House Vote, Obama Signature Vowed*, BNA BANKING DAILY, May 20, 2009.

144. *Problem Credit Card Practices*, *supra* note 1, at 61 (statement of Kenneth J. Clayton, Managing Director and Gen. Counsel, ABA Card Policy Council, American Bankers Association).

145. *Id.* at 14.

146. See MIERZWINSKI & LINDSTROM, *supra* note 4, at 7.

147. See Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, §§ 301-305, 123 Stat. 1734, 1747-1751 (to be codified in scattered sections of 15 U.S.C.).

version of the bill eliminated the option for financial literacy courses.¹⁴⁸ This change, along with many others, came as a result of efforts to move the reform bill through the Senate more quickly¹⁴⁹ and a weekend of bipartisan negotiations between members of the Senate Banking Committee.¹⁵⁰ With earlier versions of the bill barely passing with Senate approval, some lawmakers worried that the tougher version of the Senate bill would face greater opposition by the House of Representatives.¹⁵¹

The data concerning financial literacy supports congressional concerns.¹⁵² One-third of the students surveyed by the Sallie Mae Foundation had rarely or never discussed credit card use with their parents.¹⁵³ Nevertheless, Congress urged but did not require colleges and universities to include financial education in student orientation sessions.¹⁵⁴

Additionally, the CARD Act and the subsequent FRB rules still allow for aggressive on-campus marketing.¹⁵⁵ Credit card issuers on campus are still allowed to offer tangible items to students on campus, so long as receipt of the item is not conditioned upon the student filling out an application for a credit

148. *Compare* Credit Card Accountability Responsibility and Disclosure Act of 2009 § 301 (as passed by House, April 30, 2009) (providing protections for underage consumers, including three prerequisites for obtaining a credit card), *and* S. 414, 111th Cong. (as introduced in Senate, February 11, 2009) (requiring completion of a financial literacy course and providing that the Secretary of the Treasury was responsible for publishing a list of certified courses and programs pertaining to financial literacy and education aimed at young consumers), *with* Credit Card Accountability Responsibility and Disclosure Act of 2009 § 301 (as passed by House, May 20, 2009), *and* S. 414, 111th Cong. (as passed by Senate, May 19, 2009).

149. *See* Sudeep Reddy, *Senators Sort Out Curbs on Credit Cards*, WALL ST. J., May 6, 2009, at A4.

150. Thecla Fabian, *Dodd, Shelby Agree on Card Bill; Senate Could Resume Debate Soon*, BNA BANKING DAILY, May 12, 2009 (reporting negotiations between Chairman Christopher Dodd, a Democrat, and the committee's ranking member, Republican Senator Richard Shelby).

151. Reddy, *supra* note 151.

152. *See* SALLIE MAE, *supra* note 4.

153. *Id.*

154. *See* Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, § 304, 123 Stat. 1734, 1749 (to be codified in scattered sections of 15 U.S.C.) (providing a Congressional recommendation for universities to adopt financial literacy policies).

155. *See* Truth in Lending, 74 Fed. Reg. at 54,187 (Oct. 21, 2009) (to be codified at 12 C.F.R. pt. 226); Credit Card Accountability Responsibility and Disclosure Act of 2009 § 304.

card.¹⁵⁶ The CARD Act and the rules proposed by the FRB fail to protect students from the powerful marketing strategies employed by companies once they convince students to stop at a table.¹⁵⁷

C. *Effects on Young Consumers*

As feared by those who oppose the new CARD Act, the consequences of the tight restrictions on young consumers' access to credit will severely negatively affect the segment of the population that the law was intended to protect.¹⁵⁸ Critics argue that the prerequisites to obtaining a credit card for underage users seem to infringe on the rights of "legally-recognized adults."¹⁵⁹ Eighteen to twenty-one year olds in America enjoy certain rights such as voting, marrying, entering into nonvoidable contracts, and enlisting in the military, but now they will be unable to enjoy the right to begin their financial independence.¹⁶⁰

The consequences of the new rules may not be immediately apparent to middle- and upper-class families.¹⁶¹ Many wealthier parents may be willing to either provide their college student with a credit card as an authorized user of the parents' card or to cosign on the account because of their increased ability to assume responsibility for the debt incurred.¹⁶² A segment of the population that may be the most negatively impacted by the new credit card rules, however, are consumers under twenty-one whose parents are unable or unwilling to cosign on a credit card application as a result of their own inability to assume such a debt.¹⁶³ Many students whose parents are unwilling to take such actions will be denied access to credit.¹⁶⁴ This may affect the ability

156. 74 Fed. Reg. at 54,187.

157. See Credit Card Accountability Responsibility and Disclosure Act of 2009 §§ 301-305.

158. See generally *Problem Credit Card Practices*, *supra* note 1, at 14-15 (statement of Kenneth J. Clayton, Managing Director and Gen. Counsel, ABA Card Policy Council, American Bankers Association).

159. *Adult Supervision*, *supra* note 140.

160. Bandyk, *supra* note 101.

161. Gross, *supra* note 7.

162. *Id.*

163. *Id.*

164. Letter from Floyd E. Stoner, Executive Vice President, Cong. Relations and Public Policy, Am. Bankers Ass'n, to Members of the House of Representatives on

of eighteen to twenty-one year-olds to support themselves, and may also negatively affect their ability to cover educational costs.¹⁶⁵ Ninety-two percent of those undergraduates with credit cards reported using the cards for college-related expenses such as textbooks and tuition.¹⁶⁶

V. CONCLUSION

The debate surrounding the CARD Act points to an overarching theme in the United States: the lack of financial literacy, especially in young adults.¹⁶⁷ The American Bankers Association and other trade associations maintained that “continued efforts to improve financial education, rather than prescriptive policy decisions, are the best way to benefit this segment of the population.”¹⁶⁸ Unfortunately, the CARD Act fails to address the need for adequate financial education for young consumers.¹⁶⁹ Without this foundation, problems of irresponsible or excessive credit card use will continue as young consumers transition into adulthood.¹⁷⁰

The CARD Act contains some meaningful protections, however, specifically in the area of curbing credit card issuers’ marketing practices. Nevertheless, the protections have loopholes. The restrictions on obtaining credit protect only those college students who presumably have an adult to cosign on and assume their debt obligations.¹⁷¹ However, these restrictions are onerous and will disadvantage young consumers who do not have access to

H.R. 627 (April 30, 2009), available at <http://www.aba.com/NR/rdonlyres/76DCD307-2D7E-48A6-A10F-623175F0AEAD/60648/>

HouseMemoreCreditCards043009.pdf.

165. SALLIE MAE, *supra* Note 4, at 3.

166. *Id.*

167. Pinto, *supra* note 100.

168. *Problem Credit Card Practices*, *supra* note 1, at 15 (2008) (statement of Kenneth J. Clayton, Managing Director and General Counsel, ABA Card Policy Council, American Bankers Association).

169. *See supra* Part IV.B.

170. *See* U.S. GEN. ACCOUNTING OFFICE, *supra* note 19, at 10.

171. *See, e.g.* Gross, *supra* note 7 (cautioning that the CARD Act protects those under twenty-one if he or she has another way of repaying debt or another person over twenty-one years old to cosign).

a willing or able adult.¹⁷² This will most affect those from lower income families who often need credit the most.¹⁷³ These shortfalls limit the overall effectiveness of the CARD Act and prevent it from fully achieving its stated goals of protecting young consumers. In order to properly protect young consumers from deceptive credit card marketing practices, while also providing preparation for a lifetime of responsible credit card use and financial responsibility, more is needed in the general area of financial literacy that still allows young consumers to have access to the credit market.

REGINA L. HINSON

172. *Id.*

173. *Id.*